

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 99-0526P**

**Sales & Use Tax**

**Calendar Years 1996, 1997, & 1998**

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**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

**STATEMENT OF FACTS**

The negligence penalty was assessed on a use tax assessment resulting from an audit conducted for the years 1996, 1997, & 1998.

The taxpayer manufactures plastic component parts for the automotive industry. The taxpayer has two locations in Indiana.

I. **Tax Administration** - Penalty

**DISCUSSION**

The taxpayer feels the penalty should be waived as there has been significant improvement in use tax compliance since the last audit in spite of large employee turnover (100% in the accounting department).

The Department points out the use tax error rate is 30% which is material. Furthermore, the issues in the current audit are the same as the issues in the prior audit.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness,

thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

**FINDING**

The taxpayer’s penalty protest is denied.